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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,220	11/12/2003	Robert A. Erbetta	Marblehead-2	6321

7590 12/06/2004

DON HALGREN  
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EXAMINER

BASINGER, SHERMAN D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/706,220	Applicant(s) ERBETTA, ROBERT A.	
	Examiner Sherman D. Basinger	Art Unit 3617	<i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 10 is/are rejected.
- 7) ☒ Claim(s) 7 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Priority***

1. The instant application appears not to be a continuation in part of 09/301403 filed April 28, 1999 because 10/171813 filed June 14, 2002 and 09/301403 were not copending. Application 09/301403 became abandoned because a proper reply to the final rejection mailed October 26, 2001 was not received. The final rejection mailed October 26, 2001 in 09/301403 set a shortened statutory period for reply of three months from its mailing date. Application 09/301403 became abandoned three months after this mailing date.

***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The originally filed declaration incorrectly claims priority under 35 U.S.C. 120 for 09/301403. Note paragraph 1 above.

***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 44 of page 13, line 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because reference numeral 60 pointing out the flanged base in figure 7 should be changed to referenced numeral 64. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be

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notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

5. In view of paragraph 1 above, the "Field of the Invention" should be amended to delete "which is a continuation in part application of co-pending US Patent Application Serial No. 09/301,403, filed 04/28/1999".

***Claim Objections***

6. Claims 2 and 10 are objected to because of the following informalities: In claim 2, line 1 the second comma after "1" should be deleted and in claim 10 "wherein said boat rail engaging portion of said first hollow elongated member comprises a resilient curved skirt flared over at least a portion of said first end of first hollow elongated member" is repeated. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz 331.

Schwartz 331 discloses the hollow elongated members 66, 28 and 30, the articulated joints 32, the first hollow elongated member (one of 28) and the second hollow

elongated member (another of 28), and the boat rail arrangement engaging portion for the first and second hollow elongated members 26.

The boat rail engaging portion of the second elongated hollow member comprises a pair of elongated, spaced apart identical leg portions (gripping members 11 of figure 1 of Schwartz 993) having a gap (note figure 3 of Schwartz 993) there between.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 5, 6, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz 331 in view of Polidan.

In Schwartz 331 the gripping members of connectors 26 (note members 11 of Schwartz 993) are not resilient. In Polidan gripping members 66 are resilient. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to make the gripping members of connectors 26 of Schwartz 331 resilient in the manner gripping members 66 of Polidan are made resilient. Motivation to do so to allow better fit of the gripping members around the boat rail of Schwartz 331 and to allow easier attachment of the connector to the rail.

With further regard to claim 2, in Schwartz 331 the upper gripping member of connectors 26 is curved (see figure 1 of Schwartz 993) and is a flared skirt due to webs 27 (see figure 5 of Schwartz 993).

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With regard to claim 5, the narrow pinched portion of the upper skirt of the connectors 26 of Schwartz 331 is located where the channel 19 of Schwartz 993 intersects the channel 21 of Schwartz 993. This pinched portion connects the skirt portion to the elongated hollow member 28 through channel 21.

The lower jaw of connector 26 of Schwartz 331 is the lower gripping member. This lower jaw and the pinched portion define a boat rail arrangement engaging opening which extends transverse to a longitudinal axis of the hollow elongated member.

The skirt of the connector 26 of Schwartz 331 has a distal most lip which is the free end of the upper gripping member channel 19 (see Schwartz 993) which will extend across at least one of the many longitudinal axes of the elongated member 28.

#### ***Allowable Subject Matter***

11. Claims 7 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warehime is cited to show the plastic resilient connectors such as that in figure 1A. Schwartz 993 is cited because Schwartz 331 discloses that connectors 26 are as those in Schwartz 993. Warfell is cited to show the collapsible frame. DE 195 40 473 is cited to show connectors 23.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sherman D. Basinger  
Primary Examiner  
Art Unit 3617  
12/1/04

sdb  
12/1/04